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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES B. MADISON,

Defendant and Appellant.

B255085

(Los Angeles County
Super. Ct. No. TA130187)

APPEAL from a judgment of the Superior Court of Los Angeles County. Paul A. Bacigalupo, Judge. Affirmed as modified.

Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie C. Brenan and Brendan Sullivan, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Appellant James B. Madison of one count of attempted murder and one count of possession of a firearm by a twice convicted felon. On appeal, Madison challenges the sufficiency of the evidence of the attempted murder conviction. He also contends that he was entitled to an additional 26 days of custody credit. We affirm with instructions to modify the judgment to grant the additional days of credit.

FACTS AND PROCEEDINGS BELOW

Madison was a member of the Denver Lanes Blood street gang. The Denver Lanes gang's territory is centered on Denver Avenue, south of 105th Street, in South Los Angeles. The gang has been in a long-lasting conflict with the larger Hoover Criminals gang, which controls adjacent territory to the north.

At around 10:00 p.m. on September 17, 2013, Madison entered a liquor store at the corner of 98th Street and Figueroa Boulevard, part of the Hoover gang's territory. He pulled out a gun and pointed it at the body of Michael Ward, a customer of the store who was standing a short distance away near the register. Madison said, "What that D.L. like?"¹ and fired three shots. One of the shots struck Ward in the foot. Three bullet fragments and two shell casings were found in the floor of the store. The bullets did not break any of the glass in the refrigerators at the back of the store. Madison then fled the scene.

A jury convicted Madison of one count of premeditated attempted murder, in violation of Penal Code sections 664 and 187, subdivision (a), along with one count of possession of a firearm by a felon, in violation of Penal Code section 29800, subdivision (a)(1). The jury also found that he committed the offense for the benefit of, at the direction of, and in association with a criminal street gang, and that he used a handgun in committing the offense. The trial court sentenced Madison to life imprisonment with the possibility of parole after 40 years for the attempted murder count, including enhancements. The court also sentenced him to a consecutive term of eight

¹ "D.L." is apparently short for Denver Lanes.

months in prison for the count of possession of a firearm by a felon. The court awarded defendant credit for 179 days of time spent in prison, but no conduct credits.

DISCUSSION

I. *Sufficiency of Evidence*

Madison contends that there was insufficient evidence to support the jury's verdict as to the attempted murder charge. We disagree and affirm the conviction.

In evaluating a challenge to a conviction based on the sufficiency of the evidence, “we do not determine the facts ourselves. Rather, we ‘examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] . . . We do not reweigh evidence or reevaluate a witness's credibility. [Citation.]” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, disapproved on another point by *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

“[I]n order for defendant to be convicted of . . . attempted murder . . . , the prosecution had to prove [the defendant] acted with specific intent to kill.” (*People v. Smith* (2005) 37 Cal.4th 733, 739 (*Smith*).) Because it is rare for a defendant to “declare his state of mind either before, at, or after the moment he shoots,” in most cases, intent “must be derived from all the circumstances of the attempt.” (*People v. Lashley* (1991) 1 Cal.App.4th 938, 945-946 (*Lashley*).) Although motive is not an element of attempted murder, “evidence of motive is often probative of intent to kill.” (*Smith, supra*, 37 Cal.4th at p. 741.)

Madison argues that the evidence was insufficient to show intent to kill because of the direction of the shots. He relies on the surveillance video footage of the incident, in which he appears to be pointing his gun downward at the time he fired. Furthermore, Madison points out that the bullet fragments from the shooting were found on the floor, not in the walls of the store, and that none of the glass cases at the edge of the store were

shattered by bullets. This argument fails because the jury could have reasonably inferred that Madison was simply a poor shot: “The act of firing toward a victim at a close, but not point blank[] range ‘in a manner that could have inflicted a mortal wound had the bullet been on target is sufficient to support an inference of intent to kill. . . .’ [T]he fact that the victim may have escaped death because of the shooter’s poor marksmanship [does not] necessarily establish a less culpable state of mind.” (*People v. Chinchilla* (1997) 52 Cal.App.4th 683, 690, quoting *Lashley, supra*, 1 Cal.App.4th at p. 945.)

Madison also supports his insufficiency argument by comparing the facts here with those in other cases. For example, Madison points out that in *Lashley, supra*, 1 Cal.App.4th at p. 945, the defendant had previously threatened the victim, and took careful aim before shooting. And in *People v. Lenart* (2004) 32 Cal.4th 1107, 1126-1127 (*Lenart*), unlike here, the defendant demonstrated his intent to kill by continuing to pursue the victim after first firing his weapon. Although these are good examples of evidence sufficient to uphold a conviction for attempted murder, they are not, nor do the opinions purport them to be, demonstrative of what is necessary to uphold such a conviction.

As the California Supreme Court has noted, “[w]hen we decide issues of sufficiency of evidence, comparison with other cases is of limited utility, since each case necessarily depends on its own facts.” (*People v. Thomas* (1992) 2 Cal.4th 489, 516.) The facts surrounding Madison’s shooting were different from those in *Lashley* and *Lenart*, but no less sufficient to uphold a conviction for attempted murder. Witnesses testified that Madison walked into the liquor store, pointed his gun at Ward, and deliberately and without provocation fired it. (See *Lashley, supra*, 1 Cal.App.4th at p. 945 [firing a gun in a manner that could have killed is sufficient evidence of intent to kill].) In addition, the evidence regarding Madison’s gang membership, and his gang’s hostility to the Hoover gang, demonstrate his motive, which is probative of an intent to kill. (*Smith, supra*, 37 Cal.4th at p. 741.)

The jury could have reasonably inferred that Madison intended to kill Ward, and that he simply aimed badly or pulled the trigger too soon. In evaluating the sufficiency of

the evidence, “our sole function is to determine if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*Lashley, supra*, 1 Cal.App.4th 938, 946.) Under that standard, we are required to affirm Madison’s conviction.

II. Conduct Credits

Madison received 179 days of credit for time spent in jail prior to sentencing, but he did not receive any additional credit for good conduct. Pursuant to Penal Code section 4019, Madison was entitled to additional conduct credits. Because he was convicted of a violent felony as defined in Penal Code section 667.5, subdivision (c), his conduct credits were limited to no more than 15 percent of the time he spent in jail. (Pen. Code, § 2933.1; *People v. Brewer* (2011) 192 Cal.App.4th 457, 462 [holding that conduct credit under section 2933.1 applies to defendants sentenced to indeterminate life sentences].) Under this formula, Madison was entitled to an additional 26 days of conduct credit for the time he spent in jail before sentencing.

The trial court is directed to amend the judgment to reflect that Madison has 205 days of presentence custody credit, consisting of 179 days in actual custody and 26 days of conduct credit. The trial court is further directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

DISPOSITION

The judgment is affirmed, subject to the modification described in Section II.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

MOOR, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.